

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

Susan Clements-Jeffrey, et al.	:	
	:	
Plaintiffs,	:	Case No. 3:09-CV-84
	:	
vs.	:	District Judge Rice
	:	
The City of Springfield, Ohio, et al.,	:	
	:	
Defendants.	:	

CONDITIONAL MOTION TO BIFURCATE PUNITIVE DAMAGES
FILED BY DEFENDANTS ASHWORTH AND LOPEZ

In their motion for partial summary judgment, the Springfield Defendants argued that the record will not support a finding that Ashworth nor Lopez are liable for punitive damages under 42 U.S.C. § 1983. *See* Doc. 70 (Mot. for Part. Summ. J.) at 29-30; Doc. 90 (Reply Mem. in Support) at 15-16. The Court granted the motion in full. Doc. 121 (Dec. and Entry) at 48. For this reason, Ashworth and Lopez believe that punitive damages are no longer available against them. Plaintiff Clements-Jeffrey, however, plainly believes otherwise. *See* Doc. 127 (Pls.' Mem. Opp. Mots. in Lim.) at 3.

In the event that punitive damages are still available against Ashworth and Lopez, they ask the Court to bifurcate that issue pursuant to Fed.R. Civ.P. 42(b). Punitive damages may be awarded in a §1983 action only when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others. *Smith v. Wade*, 461 U.S. 30, 56 (1983). Rule 42(b) allows bifurcation for the sake of convenience, to avoid prejudice or to expedite and economize the proceedings. Only one of the listed criteria

must be met to justify bifurcation. *Saxion v. Titan-C-Manufacturing, Inc.*, 86 F.3d 553, 556 (6th Cir. 1996).

If Plaintiffs establish a *prima facie* case for punitive damages, the jury would presumably be asked to answer Interrogatories dealing with “evil motive or intent,” and Defendants would presumably be entitled to present evidence of their net worth in an effort to limit the amount of punitive damages awarded. That evidence and effort would not be necessary if a jury finds in favor of the individual Defendants on the issue of §1983 liability, which Defendants expect will happen. Bifurcation of Plaintiffs’ claim for punitive damages will thus potentially speed up the trial and potentially avoid the presentation of unnecessary evidence.

For those reasons, Ashworth and Lopez respectfully ask the Court to order bifurcation of Plaintiff Clements-Jeffrey’s claims for punitive damages against them.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing was filed electronically this 5th day of September, 2011.
Notice of this filing will be sent to all counsel by operation of the Court's electronic filing system.
Parties may access this filing through the Court's system.

/s/ J. Quinn Dorgan, Esq.
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